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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 362

STATE OF WISCONSIN EX REL.
JOSEPH E. NIEDZIEJKO
and ALFRED KACZKOWSKI,
Petitioners,

v.

BOARD OF FIRE AND POLICE
COMMISSIONERS OF THE CITY
OF MILWAUKEE,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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Attorney for Petitioners

Of Counsel:
Louis J. Ceci
Nicholas C. Catania

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To The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners respectfully pray that this Court grant rehearing of its order of October 9, 1967, denying the petition for writ of certiorari, ____ U.S. ____, and that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin in the above-entitled case as prayed for in

the petition filed July 13, 1967, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

The petition for certiorari previously filed herein presented the questions:

A. Were petitioners, police officers, denied their rights under the Fifth and Fourteenth Amendments of the United States Constitution, when they are compelled to answer inquiries as to their alleged misconduct, under pain of immediate discharge?

B. Where petitioners, police officers, are compelled to answer inquiries as to their alleged misconduct, under threat of immediate discharge, can such coerced statements be used as evidence to discharge petitioners?

The petition for certiorari discussed the importance of the question presented by the failure of the Wisconsin Supreme Court to apply the rationale of Spevack v. Klein, (1967) 385 U.S. 511, 87 Sup. Ct. 625, 17 L. Ed. 2d 574, and more importantly the rationale presented by Garrity v. New Jersey, (1967) 385 U.S. 493, 87 Sup. Ct. 616, 17 L. Ed. 2d 562. At the time, while strongly suggesting that the safeguards afforded to criminals should also apply to civil matters, the petition for certiorari acknowledged that this Court had not decided "Whether a policeman, who

invokes the privilege when his conduct as a police officer is questioned in disciplinary proceedings, may be discharged for refusing to testify is a question we do not reach." Spevack Case, supra, footnote 3. The petition for certiorari urged that the rationale of the Garrity Case, supra, should apply with equal force in a civil matter.

Petitioners now respectfully present other substantial grounds available to petitioners although not previously presented.

CAN PETITIONERS BE DENIED THE EQUAL PROTECTION OF THE LAWS GUARANTEED TO ALL PERSONS, WHEN THE BASIS FOR SUCH DISCRIMINATION AND INEQUALITY OF TREATMENT RESTS SOLELY UPON THEIR OCCUPATION AS POLICE OFFICERS?

When an inquiry is made into the official conduct of a public officer, whether that inquiry be by the state or any municipality, such public officer must cooperate. However, mindful of the privileges afforded to all persons by the United States Constitution, the State of Wisconsin enacted an immunity statute (Section 885.24) which provides, among other things, as follows: ..."But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, in such action, proceeding or examination, except a prosecution

for perjury committed in giving such testimony." Emphasis added.

The statute in question appears in full in the petition for certiorari heretofore filed. (Appendix A, p. 1a). That petitioners herein did assert their claim to immunity under this state statute is evidenced in the opinion of the Wisconsin Supreme Court (Appendix B, p. 2a) where that lower court said ..."both petitioners refused to testify upon the ground of self-incrimination." (Appendix B, at p. 23a).

Petitioners concede that, in view of the language contained in the Wisconsin Statute, the privilege against self-incrimination must be invoked before immunity applies. Wolke v. Fleming (1964) 129 N.W. 2d 841, 24 Wis. 2d 606, certiorari denied 85 Sup. Ct. 897, 380 U.S. 912, 13 L. Ed. 2d 798. The decision of United States v. Monia (1943), 317 U.S. 424, 63 Sup. Ct. 409, 87 L. Ed. 376, construing a somewhat similar federal statute as providing automatic immunity does establish a federal standard applicable here where petitioners claimed their privilege against self-incrimination.

To deny to petitioners the immunity expressly granted by operation of Sec. 885.24, Wisconsin Stats.) solely on the grounds that petitioners were police officers does violence not only to the standards enunciated in the Monia case, supra, but also to the basic constitutional concept that all persons shall

be afforded the equal protection of the laws.

Since there is now presented to the Court other substantial grounds available to petitioners although not previously presented which raise an important question of federal law, it is appropriate that the question be reviewed by this Court.

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

DOMINIC H. FRINZI